

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**JUAN CARLOS DE LA PENA AND
ALMA DE LA PENA,**

Plaintiffs,

v.

**STATE FARM LLOYDS AND JESSICA
RIVERA,**

Defendants.

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CIVIL ACTION NO.: 3:16-cv-02597-B

**JOINT MOTION FOR ENTRY OF ORDER ON
SETTLEMENT ALLOCATION DISPUTE**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiffs Juan Carlos de la Pena and Alma de la Pena (“Plaintiffs”) and Defendants State Farm Lloyds and Jessica Rivera (“Defendants”) file this Joint Motion for Entry of Order on Settlement Allocation Dispute and for support would respectfully show as follows:

1. On August 1, 2016, Plaintiffs filed this suit alleging claims against Defendants in connection with the handling of a claim Plaintiffs submitted under their State Farm Lloyds (“State Farm”) homeowners’ insurance policy for coverage of wind and/or hail damages to their dwelling, located at 231 N. Pleasant Woods Drive, Dallas, Texas 75217. Under Plaintiffs’ policy, State Farm is obligated to list Plaintiffs’ mortgage company as a co-payee on any payment for damage to their collateral—the dwelling.

2. On September 12, 2016, State Farm sent to Plaintiffs an offer of settlement under the Texas Insurance Code in exchange for a complete release of all Plaintiffs’ alleged claims against Defendants.

3. On October 12, 2016, Plaintiffs accepted State Farm’s Insurance Code settlement

offer but thereafter, a dispute arose as between the parties as to the allocation of the settlement proceeds.

4. The parties were unable to resolve their dispute as to the settlement allocation and thus on November 17, 2016, Plaintiffs filed a motion to enforce settlement and allocate settlement funds, and motion for sanctions/costs. (Doc. 18, 19) On December 8, 2016, Defendants filed their response to Plaintiffs' motion (Doc. 20, 21, 22)

5. On December 15, 2016, the Court entered an Order requiring the parties to submit a joint status report by January 15, 2017, indicating whether they had resolved their differences on the settlement allocation issue. (Doc. 25 at p. 1) The Court further ordered that if the parties were unable to resolve the settlement allocation issue by January 15, 2017, they would be required to attend a mediation with mediator Christopher Nolland no later than March 31, 2017. (*Id.* at p. 1) In the Order, the Court set forth certain requirements for the mediation. (*Id.* at pp. 1-2)

6. Following entry of the Court's December 15, 2016 Order, the parties conferred in an effort to address the settlement allocation dispute without incurring the additional cost of mediation. To that end, while the parties continue to disagree regarding the appropriate allocation of the settlement proceeds, the parties request that the Court enter the proposed Order filed together with this Joint Motion, which provides as follows:

- Plaintiffs shall provide to their mortgagee, JES JOMEL LLC, written notice of this lawsuit and the parties' dispute as to the settlement allocation by sending to its registered agent, John M. D'Silva, 3330 N. Galloway 304-68, Mesquite, Texas 75150—via first class U.S. mail and via certified mail return receipt requested, Federal Express, or some other form of delivery that is tracked to ensure receipt by the addressee—a copy of this Joint Motion and the Court's Order on this Joint Motion.
- Plaintiffs shall provide to Defendants the tracking information for the aforementioned written notice.
- JES JOMEL LLC shall be allowed a period of thirty (30) days from the date on

which it receives or refuses to accept Plaintiffs' written notice to appear and object to Plaintiffs' proposed allocation of the settlement proceeds, if it wishes to do so. The thirty (30) day objection period will not begin to run until JES JOMEL LLC receives or refuses to accept Plaintiffs' written notice.

- If JES JOMEL LLC does not object to Plaintiffs' proposed allocation of the settlement proceeds within the allowed thirty (30) day objection period, it shall be deemed to have waived any objection to such allocation and State Farm Lloyds shall reissue the settlement checks according to Plaintiffs' proposed allocation.
- If JES JOMEL LLC objects to Plaintiffs' proposed allocation of the settlement proceeds within the allowed thirty (30) day period, then the parties shall attend the mediation as set forth in the Court's December 15, 2016 Order. In that event, JES JOMEL LLC's counsel and its authorized representative shall also be required to attend the mediation.

This Order would ensure that the mortgagee has been given the opportunity to receive notice of the parties' dispute regarding the settlement allocation and an opportunity to object if it determines an objection is warranted to protect its interest in the settlement proceeds.

PRAYER

WHEREFORE, Plaintiffs and Defendants mutually request that the Court enter the proposed Order submitted together with this Joint Motion.

Respectfully Submitted,

/s/ J. Ryan Fowler

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served to all counsel of record in accordance with the Federal Rules of Civil Procedure on January 24, 2017.

Via ECF Notification

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